IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

MACA.No. 304 of 2012
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OPMV 110/2005 OF ADDITIONAL MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALAKKAD
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APPELLANT(S)/3RD RESPONDENT:
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UNITED INDIA INSURANCE COMPANY LTD.,
PALAKKAD NOW REPRESENTED BY ITS ASSISTANT MANAGER,
REGIONAL OFFICE, 'SHARANYA', HOSPITAL ROAD,
KOCHI-11.

BY ADVS.SRI.MATHEWS JACOB (SR.)
SRI.P.JACOB MATHEW

RESPONDENT(S)/PETITIONER AND RESPONDENTS 1:
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1. SYEDKHADER,
   S/O.SYED SAHIB, BURACK HOUSE, NEAR FASHION SALOON,
   VAKKAKAVU, NEMMARA.P.O, CHITTUR TALUK,
   PALAKKAD DISTRICT, PIN-678 003.

2. THE DIRECTOR GENERAL OF POLICE,
   POLICE HEAD QUARTERS, THIRUVANANTHAPURAM, PIN - 695,003.

3. MANIKKAN,S/O.VELAPPAN,
   KALLAM KATTIL HOUSE, PARUTHIPULLY P.O.,
   PALAKKAD DISTRICT, PIN-678 033.

R2 BY GOVERNMENT PLEADER SRI.EGY N. ELIAS
R3 BY ADV. SRI.P.K.MOHANAN (PALAKKAD)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY
HEARD ON 25-05-2015, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

msv/

**P.B.SURESH KUMAR, J.**

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**M.A.C.A.No. 304 of 2012**

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**Dated this the 25th day of May, 2015**

**JUDGMENT**

The insurer in a proceedings for compensation before the Motor Accidents Claims Tribunal has come up in this appeal challenging the decision of the Tribunal.

2. The first respondent is a Sub Inspector of Police. He filed the claim petition alleging that on 31.7.2000, while he was travelling in the department vehicle as part of his duty, the vehicle met with an accident and he sustained injuries. The first respondent, the Director General of Police, has not filed any written statement in the proceedings. The second respondent, the driver of the vehicle remained ex parte. The appellant, the insurer of the vehicle contested the claim petition, contending among others, that the vehicle involved in the accident was issued only with a statutory policy and

that the said statutory policy does not take within its ambit the risk of the claimant who was a gratuitous passenger of the vehicle. In other words, according to the appellant, in the absence of any additional premium paid in respect of the passengers of the vehicle, the risk of passengers would not be covered by the policy issued.

3. The Tribunal rejected the contention of the appellant and allowed the claim petition permitting the claimant to recover the compensation determined as due from the appellant. The appellant is aggrieved by the said decision of the Tribunal.

4. A perusal of the impugned award indicates that the Tribunal has rejected the contention of the appellant on the ground that Ext.A7 copy of the certificate of insurance issued to the vehicle indicates that the vehicle was licensed to carry six passengers. According to the Tribunal, when policy is issued to a vehicle which has the carrying capacity of a definite number of passengers, the policy would take

within its ambit the risk of such passengers as well.

5. It is settled that a statutory policy provided for under the Motor Vehicles Act is intended only to cover the risk of third parties. It is equally settled that gratuitous passengers of a vehicle would not come within the meaning of third parties and if at all their risk is to be covered, additional premium will have to be paid for them. In the instant case, additional premium is not seen paid to cover the risk of the passengers of the vehicle. Ext.A7 policy of insurance does not indicate that the same covers the risk of the passengers of the vehicle. True, while narrating the particulars of the vehicle, it is stated in the policy that the vehicle is licensed to carry six passengers. The said description, according to me, has nothing to do with the risk sought to be covered under the policy. The issue is not as to the carrying capacity of the vehicle. The issue is as to whether the policy issued covers the risk of the passengers. In that view of the matter, the direction in the impugned

award that the appellant is liable to indemnify the first respondent is unsustainable.

In the result, the appeal is allowed in part and the direction in the impugned award that the appellant is liable to pay the compensation payable to the first respondent is vacated. The Motor Accidents Claims Tribunal is directed to release the amount deposited by the appellant in terms of Section 173 (2) of the Motor Vehicles Act to the appellant.

**P.B.SURESH KUMAR, JUDGE.**

smm